

# LOCAL REGULATION OF ADULT USE MARIJUANA

Katherine D. Laughman, Esq.

KP LAW, P.C.

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**THE LEADER IN PUBLIC SECTOR LAW**

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# TYPES OF LICENSED ADULT USE MARIJUANA

Types of Adult-Use Marijuana Establishments as defined in  
G.L. c.94G, s.1

- Marijuana Establishment means:
  - "Marijuana cultivator"
  - "Marijuana retailer"
  - "Marijuana product manufacturer"
  - "Independent testing laboratory"
  - Any other type of licensed marijuana-related business
  - NOT a Medical Marijuana Treatment Center



# OTHER TYPES OF LICENSED ADULT USE MARIJUANA

## Additional types of Licensed Marijuana Establishments

- Craft Marijuana Cultivator Cooperative
- Microbusiness
- Third party transporter
- Existing Licensee Transporter



# TYPES OF MARIJUANA ESTABLISHMENTS

**Marijuana Cultivator** means an entity licensed to:

- ❖ Cultivate marijuana,
  - ❖ process and package marijuana,
  - ❖ transfer marijuana to other Marijuana Establishments, but not to consumers.
- A **Craft Marijuana Cooperative** is a type of Marijuana Cultivator.



# TYPES OF MARIJUANA ESTABLISHMENTS

## **Marijuana Cultivator**

Each licensee (except a craft marijuana cooperative) may have up to 3 cultivation licenses; the total canopy authorized by the licenses added together may not exceed 100,000 square feet.

- Tier 1: up to 5,000 square feet      Tier 7: 50,001 to 60,000 sq. ft.
  - Tier 2: 5,001 to 10,000 sq. ft.      Tier 8: 60,001 to 70,000 sq. ft.
  - Tier 3: 10,001 to 20,000 sq. ft.      Tier 9: 70,001 to 80,000 sq. ft.
  - Tier 4: 20,001 to 30,000 sq. ft.      Tier 10: 80,001 to 90,000 sq. ft.
  - Tier 5: 30,001 to 40,000 sq. ft.      Tier 11: 90,001 to 100,000 sq. ft.
  - Tier 6: 40,001 to 50,000 sq. ft.
- 
- ❖ To expand production, licensee must demonstrate it has sold 85% of its product consistently over the six months preceding the application for expanded production.
  - ❖ The Commission may reduce the licensee's maximum canopy to a lower tier if the licensee sold less than 70% of what it produced.

# TYPES OF MARIJUANA ESTABLISHMENTS

## Marijuana Product Manufacturer

An entity authorized to:

- obtain
- manufacture
- process; and
- package marijuana and marijuana products

May also deliver marijuana and marijuana products to marijuana establishments and transfer marijuana and marijuana products to other marijuana establishments, but not to consumers.



# TYPES OF MARIJUANA ESTABLISHMENTS

## **Craft Marijuana Cultivator Cooperative**

- Must be Massachusetts Residents
- Organized as a limited liability company, limited liability partnership, or cooperative corporation
- Licensed to cultivate, obtain, manufacture, process, package and brand marijuana and/or marijuana products
- May transport to Marijuana Establishments – not consumers
- Only one craft marijuana cultivator cooperative license may be issued per business entity
  - Not limited in the number of cultivation locations it may operate
  - Limited to cultivating 100,000 square feet of canopy.
  - The cooperative may also conduct activities authorized for Marijuana Product Manufacturers at up to three locations.

# TYPES OF MARIJUANA ESTABLISHMENTS

## Marijuana Micro-Business

- A microbusiness is a co-located Tier 1 marijuana cultivator and/or marijuana product manufacturer.
- May not have an ownership stake in any other marijuana establishment
- Majority of its executives or members must have been residents of Massachusetts for no less than 12 months prior to application
- Lower application fee.





# TYPES OF MARIJUANA ESTABLISHMENTS

## Marijuana Retailer

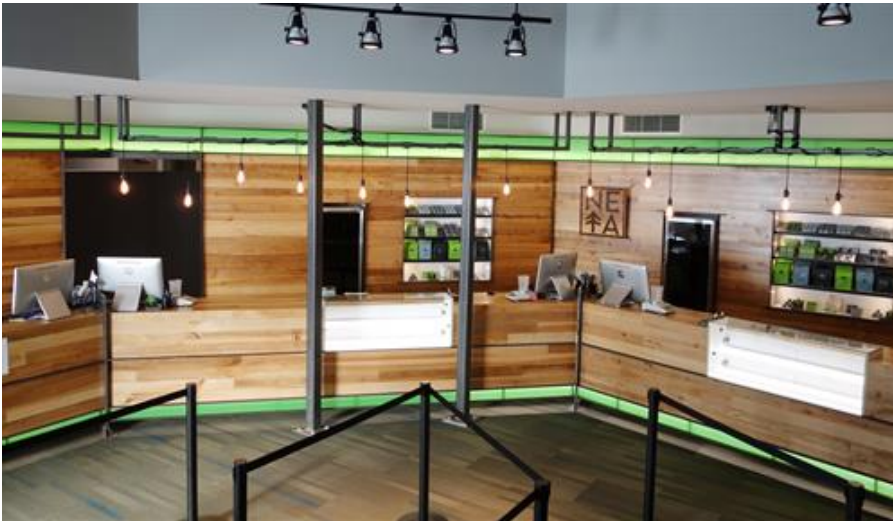
An entity authorized to:

- purchase and deliver marijuana and marijuana products from marijuana establishments
- deliver, sell and transfer to marijuana establishments and to consumers.
- May be co-located with a medical marijuana treatment center.



# TYPES OF MARIJUANA ESTABLISHMENTS

## Examples of Current Medical Marijuana Retail Locations



# TYPES OF MARIJUANA ESTABLISHMENTS

## Existing Medical Marijuana Retail Location



# TYPES OF MARIJUANA ESTABLISHMENTS

## **Marijuana Transporter**

An entity may only transport marijuana or marijuana products when such transportation is not already authorized under a marijuana establishment license if it has a Marijuana Transporter license.

## **Third Party Transporter**

Does not hold another marijuana establishment license and is not registered as a registered marijuana dispensary pursuant to 105 CMR 725.000.

## **Existing Licensee Transporter**

A Marijuana Establishment that contracts with other Marijuana Establishments to transport their marijuana and marijuana products to other establishments.



# TYPES OF MARIJUANA ESTABLISHMENTS

## Marijuana Research Facility

- An academic institution, non-profit corporation or domestic corporation or entity authorized to do business in the Commonwealth of Massachusetts.
- May cultivate, purchase or otherwise acquire marijuana for the purpose of conducting research regarding marijuana and marijuana products.
- A research facility may not sell marijuana cultivated under its research license





# TYPES OF MARIJUANA ESTABLISHMENTS

## **Independent Testing Laboratory**

- accredited by a third-party accrediting body or that is otherwise approved by the Commission;
- independent financially from any Medical Marijuana Treatment Center (RMD), Marijuana Establishment or licensee for which it conducts a test; and
- qualified to test cannabis or marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, § 34.

## **Standards Testing Laboratory**

- An entity that would otherwise qualify to be an independent testing laboratory but instead performs blind tests to verify the results of an independent testing laboratory at the request of the Commission.



# Special Regulations for Nantucket and Martha's Vineyard

- (1) To the extent permitted by law, Marijuana Establishments operating from locations in the Counties of Dukes County and Nantucket (island counties) may operate in full compliance with 935 CMR 500.000.
- (2) If Marijuana Establishments operating from locations in the island counties are prevented from operating in full compliance with 935 CMR 500.000 by operation of law, **they are not required to utilize Independent Testing Laboratories until such time as a laboratory is located on the island where the Marijuana Establishment is located or the establishment can transport marijuana product to the mainland of Massachusetts.**
- (3) If Marijuana Establishments operating from locations in the island counties are prevented from utilizing Independent Testing Laboratories by operation of law, **they are required to test marijuana products in a manner that is not unreasonable impracticable but also adequately protects the public health in the opinion of the Commission.** Such testing may include:
  - (a) a modified on-premises testing system approved by the Commission if the label on any marijuana or Marijuana Product so tested discloses in capital letters: WARNING: LIMITED TESTING FOR CONTAMINANTS AND PESTICIDES;
  - (b) a testing facility in the island counties that does not meet the criteria for an Independent Testing Laboratory, but is approved by the Commission for testing by Marijuana Establishments located in the island counties; or
  - (c) Such other testing system approved by the Commission.

# TYPES OF LICENSED MEDICAL USE MARIJUANA

## Medical Use Marijuana licensed by the Department of Public Health (105 CMR 725.00)

- Medical Marijuana Treatment Center (or RMD)
  - Each RMD is licensed (registered) to cultivate, process and retail its own marijuana under a single license
  - DPH will continue to regulate medical-use marijuana in the short-term under its existing regulatory scheme, 105 CMR 725
  - Transfer of oversight and regulation of medical-use marijuana to the Cannabis Control Commission will occur on or before December 31, 2018.





# ON-SITE SOCIAL CONSUMPTION

## Petition for Question on State Ballot to Social Consumption

### Requirements:

Petition of not fewer than 10 percent of the number of the voters of the city or town voting at the state election preceding the filing of the petition (G.L. c.94G, s.3(b))

- The ballot question must be presented to the voters of the city or town at the next biennial state election to allow the consumption of marijuana and marijuana products on the premises where they are sold.
- Petition must conform to provisions of General Laws relating to initiative petitions at the municipal level
- Likely requirement will be for petition to be filed with the Secretary of the Commonwealth no later than the first Wednesday in August.
- This is the ONLY procedure whereby a municipality can allow social consumption

# CURRENT TIMELINE

<b>April 1, 2018</b>	<ul style="list-style-type: none"><li>• Began certification application for “priority applicants,” which include Medical Marijuana Treatment Centers and “Economic Empowerment Applicants”</li></ul>
<b>April 15, 2018</b>	<ul style="list-style-type: none"><li>• Began accepting license applications from certified “priority applicants.” All license types available.</li></ul>
<b>May 1, 2018</b>	Open applications for: <ul style="list-style-type: none"><li>• Cultivation</li><li>• Microbusiness</li><li>• Craft cooperatives</li><li>• Independent Testing Laboratories</li><li>• Laboratory Agents</li></ul>
<b>June 1, 2018</b>	Open applications for: <ul style="list-style-type: none"><li>• Retail</li><li>• Product manufacturers</li><li>• Transport</li></ul>



# Cannabis Control Commission Regulations – 935 CMR 500

## State Licensing Process Overview

### Application of Intent

- Incorporation
- Capital
- Bond
- Property Interest
- Municipal Information
- Positive Impact on DIA

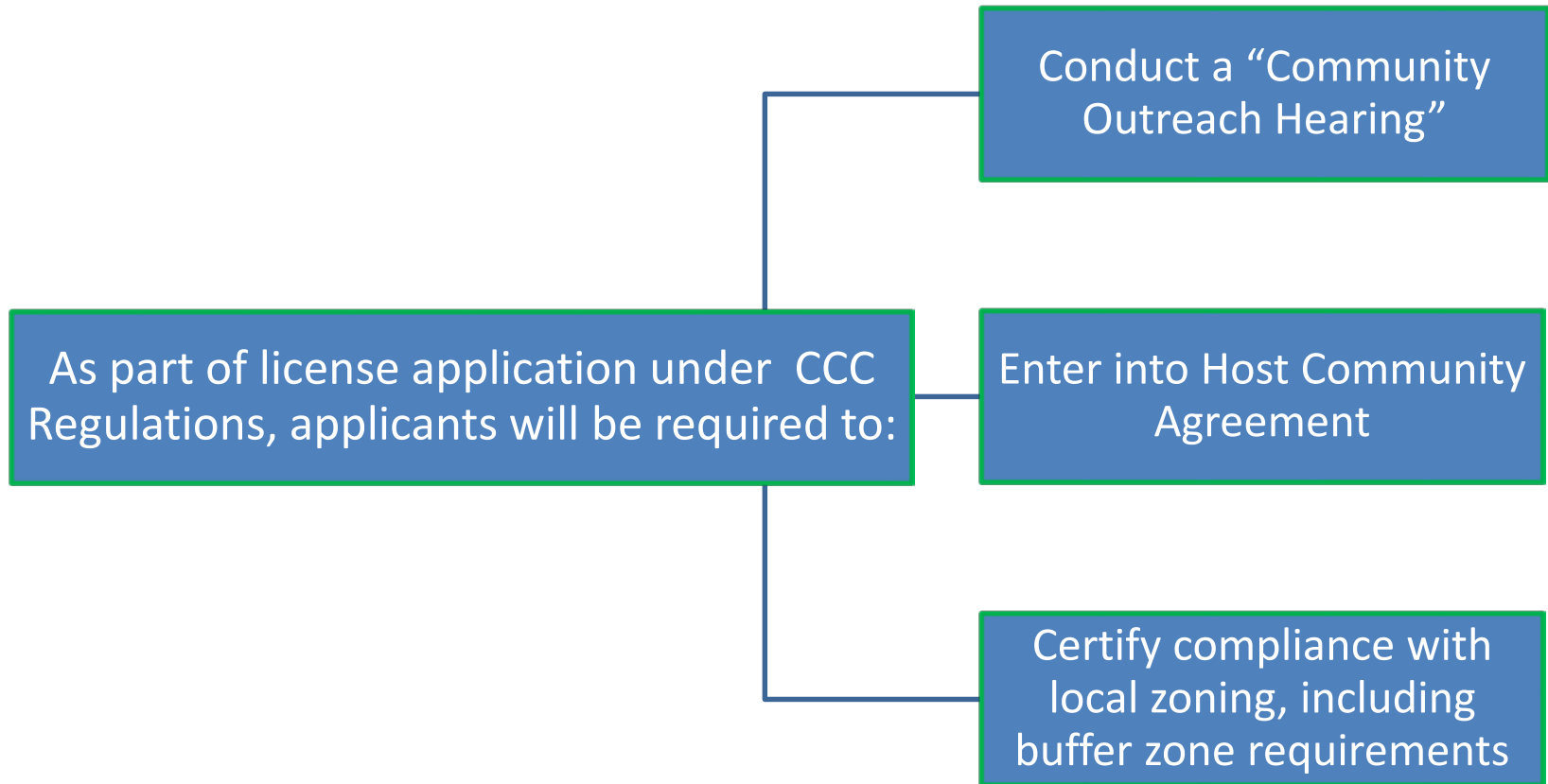
### Background Check

- All executives, managers, persons or entities with direct or indirect authority over the management policies, cultivation or security operations
- Fingerprint check
- Nationwide civil & criminal

### Management and Operations Profile

- Certificate of Good Standing with SoS and DOR
- Business Plan
- Operating Policies and Procedures
- Training Plan

# MUNICIPAL ROLE IN LICENSING BY THE CANNABIS CONTROL COMMISSION



# COMMUNITY IMPACT MEETING

**CCC Regulations require an Applicant to hold a Community Outreach Meeting within six (6) months prior to submission of license application to CCC**

## **Notice**

Meeting must be advertised at least seven (7) calendar days prior to date of hearing

Copy of meeting notice filed with town or city clerk, planning board, contracting authority for the municipality, local licensing authority for adult use marijuana (if applicable)

Copy of meeting notice must be sent to abutters

## **Content of Hearing**

Discussions of type(s) of Marijuana Establishment to be located at proposed address

Security information

Steps taken by Applicant to prevent diversion to minors

Plan for positive community impact

Information to demonstrate location will not be a nuisance

**Requirement for Q&A from community members to representatives of Marijuana Establishment**

# HOST COMMUNITY AGREEMENTS

## Host Community Agreements

The Act requires that both recreational marijuana establishments and medical marijuana treatment centers enter into a HCA with host communities and allows for a “community impact fee.”

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- The community impact fee shall not amount to more than 3 per cent of the gross sales of the marijuana establishment or medical marijuana treatment center or be effective for longer than 5 years.
  - The Act does not expressly preclude renegotiation of a HCA Community Impact Fee at the end of the initial five year term.
  - Applicant must certify to the CCC that it has entered into a HCA as part of application to CCC.
  - Broad authority under HCA and municipal contracting authority to impose additional terms to regulate marijuana establishments

# ZONING BYLAW/ORDINANCE COMPLIANCE

Applicants must submit to the CCC documentation that a proposed site is compliant with the bylaws/ordinances *in effect* at the time of the application



Once application filed with CCC is deemed complete, the CCC will notify the municipality



The municipality has 60 days from date of correspondence from CCC to notify the CCC that the applicant is not in compliance with local ordinance/bylaw



If no communication is sent from the municipality, the Applicant will be deemed in compliance

# ZONING BYLAWS/ORDINANCES

## Time , Place and Manner

- Municipalities may regulate the “time, place and manner” of marijuana establishment operations and impose reasonable safeguards.
- May include special permit or site plan review
- May include creation of overlay districts

## May not be “unreasonably impracticable.”

- *“the measures necessary to comply” may not subject licensees to “unreasonable risk or require such a high investment of risk, money, time or any other resource or asset that a reasonably prudent businessperson would not operate a marijuana establishment.” (G.L. c.94G, s.1)*

## Existing Use Classifications

- A proposed marijuana-related may be regulated under an existing use classifications.
- *Municipalities may not interpret prohibitory bylaws/ordinances as excluding marijuana establishments*

## Local licensing

- CCC regulations provide that a municipality may implement its own licensing process/fees provided it does not conflict with state law.



# ZONING BYLAWS/ORDINANCES

## Buffer Zone Requirements

Under the Act, a Marijuana Establishment may not be located within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12 (measured from lot lines of impacted properties).

Municipalities may adopt an ordinance or bylaw that reduces that distance requirement

NOTE: This buffer is less restrictive than the default buffer zone imposed by DPH on medical marijuana treatment centers:

*"Absent local siting requirements, MMTCs shall not be sited within a radius of five hundred feet of a school, daycare center, or any facility in which children commonly congregate."*

*105 CMR 725.110(A)(14)*

# ZONING MORATORIA

## Zoning Moratoria

- A zoning moratorium, imposing a temporary limit on the ability of applicants to locate marijuana establishments within a municipality, may be a powerful tool available to municipalities to allow additional time to plan for regulation of marijuana uses.
- **Nantucket has imposed a zoning moratorium until the end of December, 2018.**

# CURRENT NANTUCKET ZONING REGULATIONS

## TEMPORARY MORATORIUM

- In November, 2017, the Town adopted a temporary moratorium on the use of land or structures for a recreational marijuana establishment and other uses related to recreational marijuana.
- The moratorium shall be in effect through December 31, 2018.
- The purpose of the moratorium is to allow for a planning process to:
  - address the potential impacts of recreational marijuana in the Town,
  - to consider the Cannabis Control Commission regulations regarding recreational marijuana establishments,
  - to consider adopting new Zoning Bylaws in response to these new issues.

# CURRENT NANTUCKET ZONING REGULATIONS

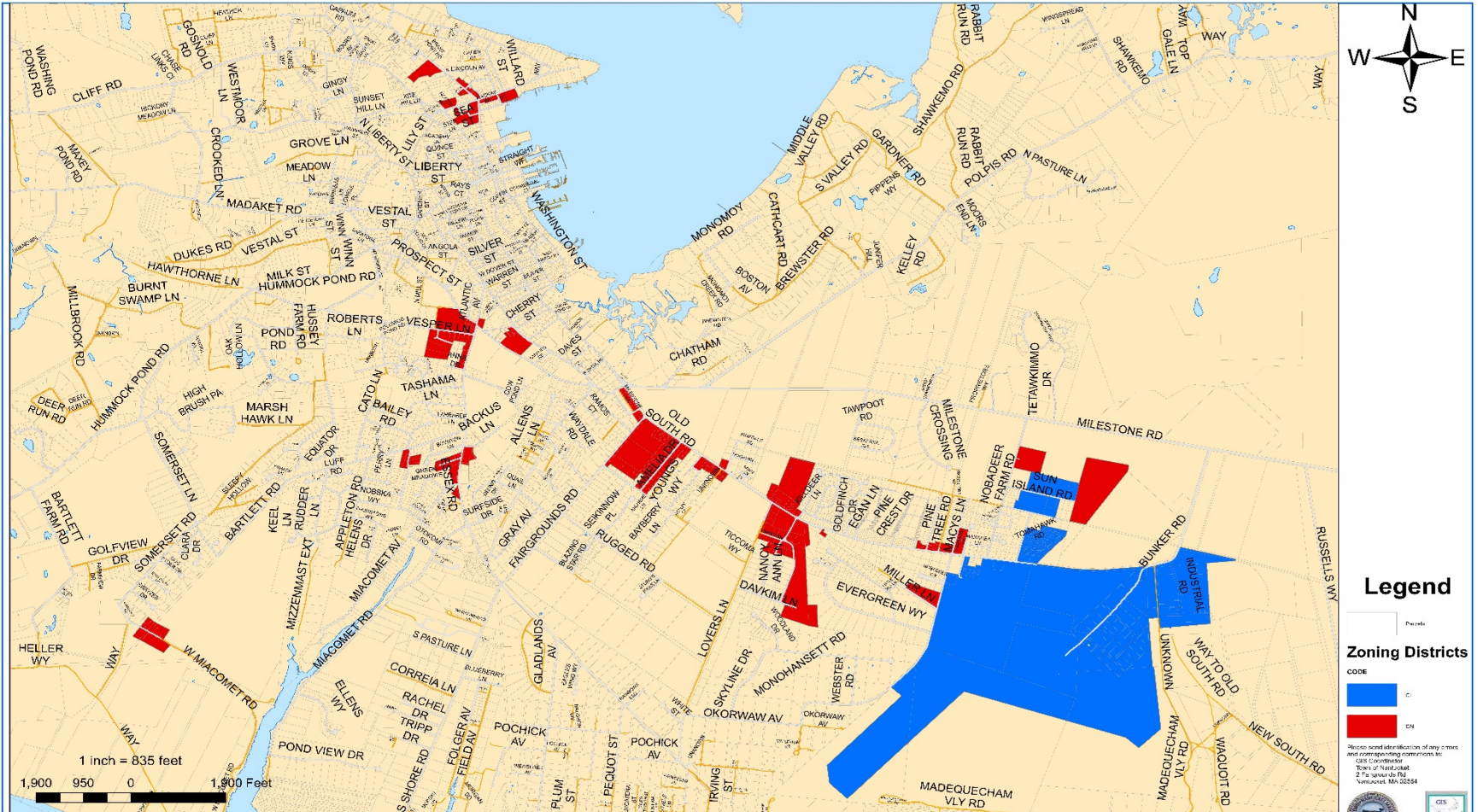
## **CURRENT ZONING OF ADULT USE (RECREATIONAL) MARIJUANA**

### MARIJUANA ESTABLISHMENT, RECREATIONAL

[Added 11-6-2017 STM by Art. 2, AG approval 2-26-2018]

- (1) A marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business as defined in MGL c.94G, § 1. Recreational marijuana establishments are subject to the following standards:
  - (a) Recreational marijuana establishments shall be located in standalone facilities and shall not be allowed within a building or structure containing other retail, commercial, residential, industrial, or other uses, except for co-location with a licensed medical marijuana treatment center.
  - (b) A minimum separation of 500 feet, measured between lot lines, is required between recreational marijuana establishments and state-certified public or private schools or state-licensed day-care centers.
  - (c) No building permit for a recreational marijuana establishment shall issue until the applicant has executed a Host Community Agreement with the Town pursuant to MGL c.94G, § 3(d).

# CURRENT NANTUCKET ZONING REGULATIONS



Town of Nantucket - GIS Mapsheet

# LIMITATION OR PROHIBITION

Pursuant to G.L. c.94G, §3, a municipality may prohibit or limit recreational marijuana establishments. Additional procedural requirements may apply to implement the following:

prohibit the operation of **one or more types** of marijuana establishments

limit the number of marijuana retailers **to fewer than 20 percent** of the number of retail off-premises alcoholic beverage licenses issued under G.L. c.138 by the municipality

limit the number of any type of marijuana establishment to **fewer than the number of medical marijuana treatment centers** registered to engage in the same type of activity in the municipality.



# LIMITATION OR PROHIBITION - PROCESS

If a municipality voted in favor of Question 4 on November 8, 2016 [i.e., a majority of voters casting ballots voted “yes” on the question], then two votes must be taken before a prohibiting or limiting bylaw/ordinance can be effective:

- (1) it must be approved by the voters by ballot at an annual or special election, and
- (2) the ordinance or bylaw must be approved by the local legislative body.

# LIMITATION OR PROHIBITION



Municipalities may impose bylaw limitations on marijuana retail establishments amounting to 20% or higher than the number of package store licenses issued without the two step ballot/bylaw process



# LOCAL TAX OPTION



- The Act created a new Chapter 64N of the General Laws setting tax rates for the sale of recreational marijuana products.
- Section 3 allows cities and towns to impose a local sales tax on the “sale or transfer of marijuana or marijuana products by a marijuana retailer operating within the city or town” up to 3% of gross sales for retail transactions.
- Nantucket voted to accept the full 3% at its last Special Town Meeting in November, 2017

# QUESTIONS?



# CONTACT INFORMATION

Katherine D. Laughman, Esq.

**KP Law, P.C.**

101 Arch Street, 12th Floor

Boston, MA 02110

(617) 556-0007

[klaughman@k-plaw.com](mailto:klaughman@k-plaw.com)

[www.k-plaw.com](http://www.k-plaw.com)



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